

109TH CONGRESS  
1ST SESSION

# H. R. 753

To amend the Federal Food, Drug, and Cosmetic Act to protect the public health from the unsafe importation of prescription drugs and from counterfeit prescription drugs, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2005

Mr. BRADLEY of New Hampshire introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Federal Food, Drug, and Cosmetic Act to protect the public health from the unsafe importation of prescription drugs and from counterfeit prescription drugs, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Safe Importation of Medical Products and Other Rx  
6       Therapies Act of 2005” or the “Safe IMPORT Act of  
7       2005”.

1 (b) TABLE OF CONTENTS.—The table of contents of  
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Importation.
- Sec. 3. Protection against adulterated prescription drugs.
- Sec. 4. Internet pharmacies.
- Sec. 5. Administrative detention and temporary hold.
- Sec. 6. Suspension.
- Sec. 7. Debarment for repeated or serious prescription drug importation violations.
- Sec. 8. Registration of prescription drug importation facilities.
- Sec. 9. Maintenance and inspection of records for prescription drugs.
- Sec. 10. Advance notice of imported prescription drug shipments.
- Sec. 11. Authority to mark prescription drugs refused admission into the United States.
- Sec. 12. Prohibition of port shopping.
- Sec. 13. Authority to commission other Federal and State officials to conduct inspections.
- Sec. 14. User fees relating to prescription drug importation.
- Sec. 15. Anticounterfeiting provisions.
- Sec. 16. Conforming amendments.

3 **SEC. 2. IMPORTATION.**

4 (a) IN GENERAL.—Chapter VIII of the Federal  
 5 Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.)  
 6 is amended—

7 (1) by inserting after the chapter heading the  
 8 following:

9 **“Subchapter A—General Provisions”**; and

10 (2) by adding at the end the following:

11 **“Subchapter B—Importation of Prescription**  
 12 **Drugs**

13 **“SEC. 811. DEFINITIONS.**

14 **“In this subchapter:**

15 **“(1) DRUG IMPORTATION FACILITY.—The term**  
 16 **‘drug importation facility’ means a person, other**

1 than an individual importing a prescription drug  
2 under section 812, located outside the United States  
3 (other than a transporter) that engages in the dis-  
4 tribution or dispensing of a prescription drug that is  
5 imported or offered for importation into the United  
6 States.

7 “(2) INTERNET PHARMACY.—The term ‘Inter-  
8 net pharmacy’ means a person, other than an indi-  
9 vidual importing a prescription drug under section  
10 812, that offers to dispense in the United States a  
11 prescription drug through an Internet website in  
12 interstate commerce, regardless of whether the phys-  
13 ical location of the principal place of business of the  
14 Internet pharmacy is in the United States or in an-  
15 other country.

16 “(3) PHARMACY.—The term ‘pharmacy’ means  
17 a person, other than an individual importing a pre-  
18 scription drug under section 812, licensed by a State  
19 to dispense prescription drugs or to provide pharma-  
20 ceutical care.

21 “(4) PERMITTED COUNTRY.—

22 “(A) IN GENERAL.—The term ‘permitted  
23 country’ means a country that—

24 “(i) was a member of the European  
25 Union as of December 31, 2003; and

1 “(ii) is designated by the Secretary as  
2 a permitted country under subparagraph  
3 (B).

4 “(B) REPORT.—Three years after the date  
5 of enactment of this subchapter, the Secretary  
6 shall submit to the Committee on Health, Edu-  
7 cation, Labor, and Pensions of the Senate and  
8 to the Committee on Energy and Commerce of  
9 the House of Representatives a report that in-  
10 cludes—

11 “(i) a list of countries under subpara-  
12 graph (A)(i) designated by the Secretary  
13 from which a prescription drug shall be  
14 permitted to be imported into the United  
15 States under this subchapter, and the basis  
16 for the Secretary’s determination that the  
17 importation of a prescription drug from  
18 such countries would not present an in-  
19 creased risk to the public health;

20 “(ii) a list of countries under subpara-  
21 graph (A)(i) from which a prescription  
22 drug shall not be permitted to be imported  
23 into the United States under this sub-  
24 chapter, and the basis for Secretary’s de-  
25 termination that the importation of a pre-

1           scription drug from such countries would  
2           present an increased risk to the public  
3           health;

4           “(iii) for countries identified in clause  
5           (i), any additional measures that could be  
6           taken to ensure that there will be no in-  
7           creased risk to the public health; and

8           “(iv) for countries identified in clause  
9           (ii), any additional measures that could be  
10          taken to avoid, reduce, or mitigate such in-  
11          creased risk to the public health.

12          “(C) DETERMINATION.—The Secretary  
13          may determine whether to designate a per-  
14          mitted country at any time after submission of  
15          the report under subparagraph (B).

16          “(5) PRESCRIPTION DRUG.—

17               “(A) IN GENERAL.—The term ‘prescription  
18               drug’ means a drug described in section 503(b)  
19               that is approved by the Secretary under section  
20               505.

21               “(B) EXCLUSIONS.—The term ‘prescrip-  
22               tion drug’ does not include—

23                       “(i) a controlled substance (as defined  
24                       in section 102 of the Controlled Sub-  
25                       stances Act (21 U.S.C. 802));

1 “(ii) a biological product (as defined  
2 in section 351 of the Public Health Service  
3 Act (42 U.S.C. 262));

4 “(iii) an infused drug (including a  
5 peritoneal dialysis solution);

6 “(iv) an intravenously injected drug;

7 “(v) a drug that is inhaled during sur-  
8 gery;

9 “(vi) a parenteral drug;

10 “(vii) a drug manufactured through 1  
11 or more biotechnology processes, includ-  
12 ing—

13 “(I) a therapeutic DNA plasmid  
14 product;

15 “(II) a therapeutic synthetic  
16 peptide product of not more than 40  
17 amino acids;

18 “(III) a monoclonal antibody  
19 product for in vivo use; and

20 “(IV) a therapeutic recombinant  
21 DNA-derived product;

22 “(viii) a drug required to be refrig-  
23 erated at any time during manufacturing,  
24 packing, processing, or holding; or

25 “(ix) a photoreactive drug.

1           “(6) TREATING PROVIDER.—The term ‘treating  
2       provider’ means a licensed health care provider  
3       that—

4           “(A)(i) performs a documented patient  
5       evaluation (including a patient history and  
6       physical examination) of an individual to estab-  
7       lish the diagnosis for which a prescription drug  
8       is prescribed;

9           “(ii) discusses with the individual the  
10      treatment options of the individual and the  
11      risks and benefits of treatment; and

12          “(iii) maintains contemporaneous medical  
13      records concerning the individual; or

14          “(B) provides care to an individual as part  
15      of an on-call or cross-coverage arrangement  
16      with a health care provider described in sub-  
17      paragraph (A).

18          “(7) WHOLESALER.—

19          “(A) IN GENERAL.—The term ‘wholesaler’  
20      means a person licensed as a wholesaler or dis-  
21      tributor of prescription drugs in the United  
22      States as described in section 503(e)(2).

23          “(B) EXCLUSION.—The term ‘wholesaler’  
24      does not include—

1 “(i) a person authorized to import  
2 drugs under section 801(d)(1); or

3 “(ii) an individual importing a pre-  
4 scription drug under section 812.

5 **“SEC. 812. PERSONAL IMPORTATION.**

6 “(a) IN GENERAL.—An individual may import a pre-  
7 scription drug from Canada or a permitted country into  
8 the United States for personal use (not for resale), subject  
9 to subsections (b) and (c).

10 “(b) IMPORTATION.—An individual may import a  
11 prescription drug if—

12 “(1) the prescription drug is purchased from a  
13 licensed pharmacy in Canada or a licensed pharmacy  
14 in a permitted country and dispensed in compliance  
15 with the applicable laws of Canada or the permitted  
16 country regarding the practice of pharmacy;

17 “(2) the prescription drug is imported for per-  
18 sonal use (not for resale) by the individual;

19 “(3) the prescription drug is imported from  
20 Canada or a permitted country into the United  
21 States;

22 “(4) the prescription drug is imported by the  
23 individual on the person of the individual;



1 “(5) the quantity of the prescription drug im-  
 2 ported does not exceed a 90-day supply during any  
 3 90-day period; and

4 “(6) the prescription drug is accompanied by—

5 “(A) a copy of a prescription valid in a  
 6 State and cosigned by a prescribing physician  
 7 in Canada or the permitted country; or

8 “(B) if the prescription drug is available in  
 9 Canada or the permitted country without a pre-  
 10 scription, a copy of the valid prescription signed  
 11 by a pharmacist licensed in Canada or the per-  
 12 mitted country.

13 “(c) COMPASSIONATE USE.—The Secretary may per-  
 14 mit an individual to import an up to a 90-day supply of  
 15 a drug that is not approved by the Secretary under section  
 16 505 if the importation is for continuation of personal use  
 17 by the individual for treatment, begun in a foreign coun-  
 18 try, of a serious medical condition.

19 **“SEC. 813. PHARMACY AND WHOLESALE IMPORTATION OF**  
 20 **PRESCRIPTION DRUGS.**

21 “(a) IN GENERAL.—

22 “(1) IMPORTATION.—A drug importation facil-  
 23 ity, pharmacy, Internet pharmacy, or wholesaler may  
 24 import a prescription drug from Canada or a per-  
 25 mitted country into the United States for dispensing

1 in the United States in accordance with this sub-  
2 chapter.

3 “(2) LIMITATION TO CERTAIN PORTS.—The  
4 Secretary may limit the ports of entry in the United  
5 States through which a prescription drug may be  
6 imported under this section to a reasonable number  
7 of ports designated by the Secretary.

8 “(b) REQUIREMENTS.—Each prescription drug im-  
9 ported under this subchapter shall—

10 “(1) be approved under section 505;

11 “(2) comply with sections 501 and 502;

12 “(3) be in a container that bears a label stat-  
13 ing, in prominent and conspicuous type—

14 “(A) the lot number of the prescription  
15 drug;

16 “(B) the name, address and phone number  
17 of the drug importation facility;

18 “(C) the following: ‘This drug has been im-  
19 ported from \_\_\_\_\_.’, with the name of the  
20 permitted country from which the prescription  
21 drug is imported in the blank space; and

22 “(D) a unique identifier code provided by  
23 the Secretary that modifies the national drug  
24 code of the prescription drug to indicate that  
25 the drug has been imported; and

1 “(4) comply with any other applicable require-  
2 ment of this Act.

3 “(c) APPROVED LABELING.—

4 “(1) IN GENERAL.—A drug importation facility  
5 that offers for importation a prescription drug under  
6 this subchapter shall submit to the Secretary an ap-  
7 plication for approval that demonstrates that the la-  
8 beling of the prescription drug to be imported into  
9 the United States complies with the requirements of  
10 sections 502 and 503.

11 “(2) PROCEDURE.—Not later than 60 days  
12 after receipt of a completed application under para-  
13 graph (1), the Secretary shall—

14 “(A) approve or deny the application con-  
15 sistent with the requirements of sections 502  
16 and 503; and

17 “(B) notify the applicant of the decision of  
18 the Secretary and, if the application is denied,  
19 the reason for the denial.

20 “(3) LISTS.—

21 “(A) APPLICATIONS.—The Secretary shall  
22 maintain an updated list of applications pend-  
23 ing, applications approved, and applications de-  
24 nied under this subsection.

1           “(B) PORTS.—The Secretary shall main-  
2           tain an updated list of ports through which a  
3           prescription drug may be imported under this  
4           section and make the list available to the public  
5           on an Internet website.

6           “(d) PROHIBITION OF IMPORTATION OF A PRESCRIP-  
7           TION DRUG THAT ENTERS OTHER COUNTRIES.—

8           “(1) IN GENERAL.—A drug importation facility,  
9           pharmacy, Internet pharmacy, or wholesaler shall  
10          not import a prescription drug if, during any period  
11          in which the prescription drug was not in the control  
12          of the manufacturer, the prescription drug entered a  
13          country other than—

14                 “(A) Canada; or

15                 “(B) subject to paragraph (2), a country  
16          that was a member of the European Union as  
17          of December 31, 2003.

18           “(2) LIMITATION.—The Secretary may exclude  
19          1 or more of the countries under subparagraph (B)  
20          of paragraph (1) from the application of that sub-  
21          paragraph if the Secretary determines that allowing  
22          a prescription drug to be imported into the United  
23          States after having entered that country outside con-  
24          trol of a manufacturer would present a risk to the  
25          public health.

1 “(e) PROHIBITION OF COMMINGLING.—

2 “(1) IN GENERAL.—A drug importation facility,  
3 pharmacy, Internet pharmacy, or wholesaler shall  
4 not commingle a prescription drug imported into the  
5 United States under this subchapter with a prescrip-  
6 tion drug that is not imported from Canada or a  
7 permitted country.

8 “(2) LABEL.—A pharmacy or Internet phar-  
9 macy that dispenses a prescription drug imported  
10 from Canada or a permitted country shall affix on  
11 each dispensed container of the prescription drug  
12 the label required under subsection (b)(3) unless  
13 such a label is already affixed to the container.

14 “(f) DRUG RECALLS.—On receipt of notification  
15 from the manufacturer of a prescription drug imported  
16 from Canada or a permitted country under this section  
17 that the prescription drug has been recalled or withdrawn  
18 from the market in Canada or a permitted country, a drug  
19 importation facility shall promptly provide the Secretary  
20 and any person to whom the prescription drug was distrib-  
21 uted a notice that the drug has been recalled or withdrawn  
22 from the market and that includes—

23 “(1) information (including the lot number)  
24 that identifies the prescription drug; and

1           “(2) a statement of the reason for the recall or  
2       withdrawal.

3       “(g) CHARITABLE CONTRIBUTIONS.—Notwith-  
4 standing any other provision of this section, section  
5 801(d)(1) continues to apply to a prescription drug that  
6 is donated or otherwise supplied at no charge or a nominal  
7 charge by the manufacturer of the prescription drug to  
8 a charitable or humanitarian organization (including the  
9 United Nations and affiliates) or to a government of a  
10 foreign country.

11       “(h) JURISDICTION.—The district courts of the  
12 United States shall have jurisdiction in an action brought  
13 by the United States against a person importing or offer-  
14 ing for importation a prescription drug in violation of the  
15 requirements of this section.

16       “(i) EFFECT OF SECTION.—Nothing in this section  
17 limits the authority of the Secretary relating to the impor-  
18 tation of prescription drugs (including the interdiction of  
19 prescription drugs that are unapproved, adulterated, or  
20 misbranded), other than with respect to section 801(d)(1)  
21 as provided in subsection (g).”.

22       (b) REGULATIONS.—

23           (1) PERSONAL IMPORTATION.—

24           (A) IN GENERAL.—The Secretary of  
25 Health and Human Services may promulgate

1 regulations to carry out section 812 of the Fed-  
2 eral Food, Drug, and Cosmetic Act (as added  
3 by this section).

4 (B) EFFECTIVE DATE.—Section 812 of the  
5 Federal Food, Drug, and Cosmetic Act shall  
6 take effect on the date of enactment of this Act,  
7 without regard to whether the Secretary of  
8 Health and Human Services has promulgated  
9 regulations under paragraph (1).

10 (2) PHARMACY AND WHOLESALER IMPORTA-  
11 TION OF PRESCRIPTION DRUGS.—

12 (A) IN GENERAL.—The Secretary of  
13 Health and Human Services shall promulgate  
14 interim final regulations to carry out section  
15 813 of the Federal Food, Drug, and Cosmetic  
16 Act (as added by this section).

17 (B) EFFECTIVE DATE.—Section 813 of the  
18 Federal Food, Drug, and Cosmetic Act shall  
19 take effect on the date that is 1 year after the  
20 date of enactment of this Act, without regard to  
21 whether the Secretary of Health and Human  
22 Services has promulgated regulations under  
23 paragraph (1).

1 (c) PROHIBITED ACT.—Section 301 of the Federal  
 2 Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amend-  
 3 ed by adding at the end the following:

4 “(hh) Dispensing or offering to dispense a prescrip-  
 5 tion drug imported into the United States in violation of  
 6 the requirements of section 813.”.

7 **SEC. 3. PROTECTION AGAINST ADULTERATED PRESCRIP-**  
 8 **TION DRUGS.**

9 Section 801(h) of the Federal Food, Drug, and Cos-  
 10 metic Act (21 U.S.C. 381(h)) is amended—

11 (1) in paragraph (2)—

12 (A) by inserting “and prescription drugs”  
 13 after “related to foods”;

14 (B) by inserting “and of prescription  
 15 drugs” after “adulteration of food,”; and

16 (C) by inserting “and prescription drugs”  
 17 after “importation of food”; and

18 (2) in paragraph (3), by inserting “and for en-  
 19 suring the safety of imported prescription drugs”  
 20 after “food safety”.

21 **SEC. 4. INTERNET PHARMACIES.**

22 (a) INTERNET PHARMACIES.—Chapter V of the Fed-  
 23 eral Food, Drug, and Cosmetic Act (21 U.S.C. 351 et  
 24 seq.) is amended by inserting after section 510 the fol-  
 25 lowing:



1 **“SEC. 511. INTERNET PHARMACIES.**

2 “(a) DEFINITIONS.—In this section:

3 “(1) ADVERTISING SERVICE PROVIDER.—The  
4 term ‘advertising service provider’ means an adver-  
5 tising company that contracts with a provider of an  
6 interactive computer service (as defined in section  
7 230(f) of the Communications Act of 1934 (47  
8 U.S.C. 230(f)) to provide advertising on the Inter-  
9 net.

10 “(2) DESIGNATED PAYMENT SYSTEM.—

11 “(A) IN GENERAL.—The term ‘designated  
12 payment system’ means a system used by a per-  
13 son to effect a credit transaction, electronic  
14 transfer, or money transmitting service de-  
15 scribed in subparagraph (B) that the Federal  
16 functional regulators determine, by regulation  
17 or order, could be used in connection with, or  
18 to facilitate, a restricted transaction.

19 “(B) PERSONS DESCRIBED.—A person re-  
20 ferred to in subparagraph (A) is—

21 “(i) a creditor;

22 “(ii) a credit card issuer;

23 “(iii) a financial institution;

24 “(iv) an operator of a terminal at  
25 which an electronic fund transfer may be  
26 initiated;

1 “(v) a money transmitting business;

2 or

3 “(vi) (I) an international, national, re-  
4 gional, or local network used to effect a  
5 credit transaction, electronic fund transfer,  
6 or money transmitting service; or

7 “(II) any participant in a network de-  
8 scribed in subclause (I).

9 “(3) FEDERAL FUNCTIONAL REGULATOR.—The  
10 term ‘Federal functional regulator’ has the meaning  
11 given the term in section 509 of the Gramm-Leach-  
12 Bliley Act (15 U.S.C. 6809).

13 “(4) PRESCRIPTION DRUG.—The term ‘pre-  
14 scription drug’ means a drug described in section  
15 503(b) that is approved by the Secretary under sec-  
16 tion 505.

17 “(5) INTERNET PHARMACY.—The term ‘Inter-  
18 net pharmacy’ means a person that dispenses or of-  
19 fers to dispense a prescription drug through an  
20 Internet website in interstate commerce in the  
21 United States regardless of whether the physical lo-  
22 cation of the principal place of business of the Inter-  
23 net pharmacy is in the United States or in another  
24 country.

1           “(6) RESTRICTED TRANSACTION.—The term  
2           ‘restricted transaction’ means a transaction or trans-  
3           mittal, on behalf of a individual who places an un-  
4           lawful Internet pharmacy request to any person en-  
5           gaged in the operation of an unlicensed Internet  
6           pharmacy, of—

7                   “(A) credit, or the proceeds of credit, ex-  
8                   tended to or on behalf of the individual who  
9                   placed the unlawful Internet request (including  
10                  credit extended through the use of a credit  
11                  card);

12                  “(B) an electronic fund transfer or funds  
13                  transmitted by or through a money transmit-  
14                  ting business, or the proceeds of an electronic  
15                  fund transfer or money transmitting service,  
16                  from or on behalf of the individual who placed  
17                  the unlawful Internet request;

18                  “(C) a check, draft, or similar instrument  
19                  which is drawn by or on behalf of the individual  
20                  who placed the unlawful Internet request and is  
21                  drawn on or payable at or through any financial  
22                  institution; or

23                  “(D) the proceeds of any other form of fi-  
24                  nancial transaction (identified by the Federal  
25                  functional regulators by regulation) that in-

1 involves a financial institution as a payor or fi-  
2 nancial intermediary on behalf of or for the  
3 benefit of the individual who placed the unlaw-  
4 ful Internet request.

5 “(7) UNLAWFUL INTERNET PHARMACY RE-  
6 QUEST.—The term ‘unlawful Internet pharmacy re-  
7 quest’ means the request, or transmittal of a re-  
8 quest, made to an unlicensed Internet pharmacy for  
9 a prescription drug by mail (including a private car-  
10 rier), facsimile, phone, or electronic mail, or by a  
11 means that involves the use, in whole or in part, of  
12 the Internet.

13 “(8) OTHER DEFINITIONS.—

14 “(A) CREDIT; CREDITOR; CREDIT CARD.—  
15 The terms ‘credit’, ‘creditor’, and ‘credit card’  
16 have the meanings given the terms in section  
17 103 of the Truth in Lending Act (15 U.S.C.  
18 1602).

19 “(B) ELECTRONIC FUND TRANSFER.—The  
20 term ‘electronic fund transfer’—

21 “(i) has the meaning given the term  
22 in section 903 of the Electronic Fund  
23 Transfer Act (15 U.S.C. 1693a); and

24 “(ii) includes any fund transfer cov-  
25 ered under Article 4A of the Uniform

1                   Commercial Code, as in effect in any  
2                   State.

3                   “(C) FINANCIAL INSTITUTION.—The term  
4                   ‘financial institution’—

5                   “(i) has the meaning given the term  
6                   in section 903 of the Electronic Transfer  
7                   Fund Act (15 U.S.C. 1693a); and

8                   “(ii) includes a financial institution  
9                   (as defined in section 509 of the Gramm-  
10                  Leach-Bliley Act (15 U.S.C. 6809)).

11                  “(D) MONEY TRANSMITTING BUSINESS;  
12                  MONEY TRANSMITTING SERVICE.—The terms  
13                  ‘money transmitting business’ and ‘money  
14                  transmitting service’ have the meaning given  
15                  the terms in section 5330(d) of title 31, United  
16                  States Code.

17                  “(b) IN GENERAL.—An Internet pharmacy may only  
18                  dispense or offer to dispense a prescription drug to a per-  
19                  son in the United States in accordance with this section.

20                  “(c) LICENSING OF INTERNET PHARMACIES.—

21                  “(1) IN GENERAL.—To be licensed under this  
22                  section an Internet pharmacy shall—

23                  “(A) have its principal place of business in  
24                  the United States, Canada, or a permitted  
25                  country; and

1           “(B) be licensed by the Secretary in ac-  
2 cordance with this section prior to dispensing a  
3 prescription drug to an individual.

4           “(2) CONDITIONS FOR LICENSING.—

5           “(A) APPLICATION REQUIREMENTS.—An  
6 Internet pharmacy shall submit to the Sec-  
7 retary an application that includes—

8           “(i) (I) in the case of an Internet  
9 pharmacy located in the United States,  
10 verification that, in each State in which  
11 the Internet pharmacy engages in dis-  
12 pensing or offering to dispense prescription  
13 drugs, the Internet pharmacy, and all em-  
14 ployees and agents of the Internet phar-  
15 macy, is in compliance with applicable  
16 Federal and State laws regarding—

17           “(aa) the practice of pharmacy,  
18 including licensing laws and inspec-  
19 tion requirements; and

20           “(bb) the manufacturing and dis-  
21 tribution of controlled substances, in-  
22 cluding with respect to mailing or  
23 shipping controlled substances to con-  
24 sumers; or

1                   “(II) in the case of an Inter-  
2                   net pharmacy located in Canada  
3                   or a permitted country,  
4                   verification that—

5                   “(aa) all employees and  
6                   agents of the Internet phar-  
7                   macy are in compliance with  
8                   applicable laws of Canada or  
9                   the permitted country re-  
10                  garding the practice of phar-  
11                  macy, including licensing  
12                  laws and inspection require-  
13                  ments; and

14                  “(bb) the Internet  
15                  pharmacy is in compliance  
16                  with applicable Federal and  
17                  State laws regarding the  
18                  practice of pharmacy, in-  
19                  cluding licensing laws and  
20                  inspection requirements;

21                  “(ii) verification that the person that  
22                  owns the Internet pharmacy has not had a  
23                  license for an Internet pharmacy termi-  
24                  nated by the Secretary, and that no other  
25                  Internet pharmacy owned by the person

1 has had a license under this subsection  
2 that has been terminated by the Secretary;

3 “(iii) verification from the person that  
4 owns the Internet pharmacy that the per-  
5 son will permit inspection of the facilities  
6 and business practices of the Internet  
7 pharmacy by the Secretary to the extent  
8 necessary to determine whether the Inter-  
9 net pharmacy is in compliance with this  
10 subsection; and

11 “(iv) in the case of an agreement be-  
12 tween a patient and an Internet pharmacy  
13 that releases the Internet pharmacy, and  
14 any employee or agent of the Internet  
15 pharmacy, from liability for damages aris-  
16 ing out of the negligence of the Internet  
17 pharmacy, an assurance that such a limita-  
18 tion of liability shall be null and void.

19 “(B) IDENTIFICATION REQUIREMENTS.—

20 An Internet pharmacy shall provide to any per-  
21 son that accesses the Internet pharmacy  
22 website, on each page of the website of the  
23 Internet pharmacy or by a link to a separate  
24 page, the following information:



1           “(i) The street address, city, ZIP  
2           Code or comparable mail code, State (or  
3           comparable entity), country, and telephone  
4           number of—

5                   “(I) each place of business of the  
6           Internet pharmacy; and

7                   “(II) the name of the supervising  
8           pharmacist of the Internet pharmacy  
9           and each individual who serves as a  
10          pharmacist for purposes of the Inter-  
11          net pharmacy website.

12          “(ii) The names of all States or coun-  
13          tries, as appropriate, in which the Internet  
14          pharmacy and the pharmacists employed  
15          by the Internet pharmacy are licensed or  
16          otherwise authorized to dispense prescrip-  
17          tion drugs.

18          “(iii) If the Internet pharmacy makes  
19          referrals to, or solicits on behalf of, a  
20          health care practitioner or group of practi-  
21          tioners in the United States for prescrip-  
22          tion services—

23                   “(I) the name, street address,  
24           city, ZIP Code or comparable mail

1 code, State, and telephone number of  
2 the practitioner or group; and

3 “(II) the name of each State in  
4 which each practitioner is licensed or  
5 otherwise authorized to prescribe  
6 drugs.

7 “(iv) A statement that the Internet  
8 pharmacy will dispense prescription drugs  
9 only after receipt of a valid prescription.

10 “(C) PROFESSIONAL SERVICES REQUIRE-  
11 MENTS.—An Internet pharmacy shall carry out  
12 the following:

13 “(i) Maintain patient medication pro-  
14 files and other related data in a readily ac-  
15 cessible format organized to facilitate con-  
16 sultation with treating providers, care-  
17 givers, and patients.

18 “(ii) Conduct prospective drug use re-  
19 views before dispensing medications or  
20 medical devices.

21 “(iii) Ensure patient confidentiality  
22 and the protection of patient identity and  
23 patient-specific information, in accordance  
24 with the regulations promulgated under  
25 section 264(c) of the Health Insurance

1 Portability and Accountability Act of 1996  
2 (42 U.S.C. 1320d–2 note).

3 “(iv) Offer interactive and meaningful  
4 consultation by a licensed pharmacist to  
5 the caregiver or patient prior to and subse-  
6 quent to the time at which the Internet  
7 pharmacy dispenses the drug.

8 “(v) (I) Establish a mechanism for  
9 patients to report errors and suspected ad-  
10 verse drug reactions.

11 “(II) Document in the reporting  
12 mechanism the response of the Internet  
13 pharmacy to those reports.

14 “(vi) Develop a system to inform care-  
15 givers and patients about drug recalls.

16 “(vii) Educate caregivers and patients  
17 about the appropriate means of disposing  
18 of expired, damaged, or unusable medica-  
19 tions.

20 “(viii) Assure that the sale of a pre-  
21 scription drug is in accordance with a pre-  
22 scription from the treating provider of the  
23 individual.

1 “(ix) (I) Verify the validity of the pre-  
2 scription of an individual by using 1 of the  
3 following methods:

4 “(aa) Receiving from the indi-  
5 vidual or treating provider of the indi-  
6 vidual the prescription of the indi-  
7 vidual by mail (including a private  
8 carrier), or receiving from the treating  
9 provider of the individual the prescrip-  
10 tion of the individual by electronic  
11 mail.

12 “(bb) If the prescription is for a  
13 controlled substance (as defined in  
14 section 102 of the Controlled Sub-  
15 stances Act (21 U.S.C. 802)), con-  
16 firming with the treating provider the  
17 information in subclause (II).

18 “(II) When seeking  
19 verification of a prescription of  
20 an individual under subclause  
21 (I)(bb), an Internet pharmacy  
22 shall provide to the treating pro-  
23 vider the following information:

1                   “(aa) The full name  
2                   and address of the indi-  
3                   vidual.

4                   “(bb) Identification of  
5                   the prescription drug.

6                   “(cc) The quantity of  
7                   the prescription drug to be  
8                   dispensed.

9                   “(dd) The date on  
10                  which the individual pre-  
11                  sented the prescription to  
12                  the Internet pharmacy.

13                  “(ee) The date and  
14                  time of the verification re-  
15                  quest.

16                  “(ff) The name of a  
17                  contact person at the Inter-  
18                  net pharmacy, including a  
19                  voice telephone number,  
20                  electronic mail address, and  
21                  facsimile telephone number.

22                  “(III) A prescription is  
23                  verified under subclause (I)(bb)  
24                  only if 1 of the following occurs:

1                   “(aa) The treating pro-  
2                   vider confirms, by direct  
3                   communication with the  
4                   Internet pharmacy, that the  
5                   prescription is accurate.

6                   “(bb) The treating pro-  
7                   vider informs the Internet  
8                   pharmacy that the prescrip-  
9                   tion is inaccurate and pro-  
10                  vides the accurate prescrip-  
11                  tion.

12                  “(IV) An Internet pharmacy  
13                  shall not fill a prescription if—

14                       “(aa) a treating pro-  
15                       vider informs the Internet  
16                       pharmacy within 72 hours  
17                       after receipt of a commu-  
18                       nication under subclause  
19                       (I)(bb) that the prescription  
20                       is inaccurate or expired; or

21                       “(bb) the treating pro-  
22                       vider does not respond with-  
23                       in that time.

24                       “(x) Maintain, for such period of time  
25                       as the Secretary shall prescribe by regula-

tion, a record of all direct communications with a treating provider regarding the dispensing of a prescription drug, including verification of the prescription.

“(3) LICENSURE PROCEDURE.—

“(A) ACTION BY SECRETARY.—On receipt of a completed licensing application under paragraph (3), the Secretary shall—

“(i) assign an identification number to each Internet pharmacy;

“(ii) notify the applicant of the receipt of the licensure application; and

“(iii) not later than 60 days after receipt of the licensure application, issue a license if the Internet pharmacy is in compliance with conditions under paragraph (3).

“(B) ELECTRONIC FILING.—

“(i) IN GENERAL.—For the purpose of reducing paperwork and reporting burdens, the Secretary shall require the use of electronic methods of submitting to the Secretary a licensure application required under this section and provide for elec-

1           tronic methods of receiving the applica-  
2           tions.

3           “(ii) AUTHENTICATION.—In providing  
4           for the electronic submission of such licen-  
5           sure applications under this section, the  
6           Secretary shall ensure that adequate au-  
7           thentication protocols are used to allow  
8           identification of the Internet pharmacy and  
9           validation of the data as appropriate.

10          “(4) LIST.—

11           “(A) IN GENERAL.—The Secretary shall  
12           compile, maintain, and periodically update a list  
13           of licensees.

14           “(B) AVAILABILITY.—The Secretary shall  
15           make the list described under subparagraph (A)  
16           and information submitted by the licensee  
17           under paragraph (2)(B) available to the public  
18           on an Internet website and through a toll-free  
19           telephone number.

20          “(5) LICENSING FEE.—The Secretary shall es-  
21          tablish a licensing fee that an Internet pharmacy li-  
22          censed by the Secretary under this section shall be  
23          required to pay to the Secretary.

24          “(A) COLLECTION.—



1 “(i) COLLECTION OF INITIAL YEAR LI-  
2 CENSING FEE.—A licensing fee of \$5,000  
3 shall be payable for the fiscal year in which  
4 the Internet pharmacy first submits a li-  
5 censing application under this section.

6 “(ii) COLLECTION IN SUBSEQUENT  
7 YEARS.—After the licensing fee is paid for  
8 the first fiscal year, the fee, as modified  
9 under subparagraph (B), shall be payable  
10 on or before October 1 of each year.

11 “(iii) ONE FEE PER INTERNET PHAR-  
12 MACY.—The licensing fee shall be paid  
13 only once for each Internet pharmacy for  
14 a fiscal year in which the fee is payable.

15 “(B) FEE AMOUNT.—The amount of the  
16 licensing fee shall be determined each year by  
17 the Secretary based on the anticipated costs to  
18 the Secretary of enforcing the requirements of  
19 this section in the subsequent fiscal year.

20 “(C) ANNUAL FEE DETERMINATION.—

21 “(i) IN GENERAL.—Not later than 60  
22 days before the beginning of each fiscal  
23 year beginning after September 30, 2005,  
24 the Secretary shall determine the licensing  
25 fee for that fiscal year.

1                   “(ii) PUBLICATION OF FEE  
2 AMOUNT.—Not later than 60 days before  
3 each fiscal year, the Secretary shall publish  
4 the licensing fee under this section for that  
5 fiscal year and provide for a period of 30  
6 days for the public to provide written com-  
7 ments on the fee.

8                   “(D) USE OF FEES.—The licensing fees  
9 collected under this section shall be used, with-  
10 out further appropriation, to carry out this sec-  
11 tion.

12                   “(E) FAILURE TO PAY FEE.—

13                   “(i) DUE DATE.—A licensing fee pay-  
14 able under this section shall be paid by the  
15 date that is 30 days after the date on  
16 which the fee is due.

17                   “(ii) FAILURE TO PAY.—If an Inter-  
18 net pharmacy subject to a fee under this  
19 section fails to pay the fee by the date  
20 specified under clause (i), the Secretary  
21 shall not permit the Internet pharmacy to  
22 engage in the dispensing of drugs as de-  
23 scribed under this section until all such  
24 fees owed by the Internet pharmacy are  
25 paid.

1           “(F) REPORTS.—Beginning with fiscal  
2           year 2006, not later than 60 days after the end  
3           of each fiscal year during which licensing fees  
4           are collected under this section, the Secretary  
5           shall submit to the Committee on Health, Edu-  
6           cation, Labor, and Pensions of the Senate and  
7           the Committee on Energy and Commerce of the  
8           House of Representatives a report that de-  
9           scribes—

10                   “(i) implementation of the licensing  
11                   fee authority during the fiscal year; and

12                   “(ii) the use by the Secretary of the  
13                   licensing fees collected during the fiscal  
14                   year for which the report is made.

15           “(6) TERMINATION OF LICENSE.—The Sec-  
16           retary, upon the initiative of the Secretary, may ter-  
17           minate a license issued under subsection (c), after  
18           notice to the Internet pharmacy and an opportunity  
19           for a hearing, and if the Secretary determines that  
20           an Internet pharmacy—

21                   “(A) has demonstrated a pattern of non-  
22                   compliance with this section;

23                   “(B) has made an untrue statement of ma-  
24                   terial fact in its license application; or

1           “(C) is in violation of any applicable Fed-  
2           eral or State law relating to the dispensing of  
3           a prescription drug.

4           “(7) RENEWAL EVALUATION.—

5           “(A) IN GENERAL.—Before renewing a li-  
6           cense of an Internet pharmacy under this sub-  
7           section pursuant to the submission of a renewal  
8           application, the Secretary shall conduct an eval-  
9           uation to determine whether the Internet phar-  
10          macy is in compliance with this section.

11          “(B) EVALUATION.—At the discretion of  
12          the Secretary and as applicable, an evaluation  
13          under subparagraph (A) may include testing of  
14          the Internet pharmacy website or other systems  
15          through which the Internet pharmacy commu-  
16          nicates with consumers, and a physical inspec-  
17          tion of the records and premises of the phar-  
18          macy.

19          “(8) CONTRACT FOR OPERATION OF PRO-  
20          GRAM.—

21          “(A) IN GENERAL.—The Secretary may  
22          award a contract under this subsection for the  
23          operation of the licensing program.

1                   “(B) TERM.—The duration of a contract  
2                   under subparagraph (A) shall not exceed 5  
3                   years and may be renewable.

4                   “(C) PERFORMANCE REVIEW.—The Sec-  
5                   retary shall annually review performance under  
6                   a contract under subparagraph (A).

7                   “(d) PROVIDERS OF INTERACTIVE COMPUTER SERV-  
8                   ICES OR ADVERTISING SERVICES.—A provider of inter-  
9                   active computer services (as defined in section 230(f) of  
10                  the Communications Act of 1934 (47 U.S.C. 230(f))) or  
11                  an advertising service provider shall be liable under this  
12                  section for dispensing or selling prescription drugs in vio-  
13                  lation of this section on account of another person’s selling  
14                  or dispensing of a prescription drug if the provider of the  
15                  service—

16                  “(1) accepts advertising for a prescription drug  
17                  from an unlicensed Internet pharmacy; or

18                  “(2) accepts advertising stating that an indi-  
19                  vidual does not need a physician’s prescription to ob-  
20                  tain a prescription drug.

21                  “(e) POLICIES AND PROCEDURES REQUIRED TO  
22                  PREVENT PAYMENTS FOR UNLAWFUL INTERNET PHAR-  
23                  MACY REQUESTS.—

24                  “(1) REGULATIONS.—Not later than 1 year  
25                  after the date of enactment of this section, the Fed-

1       eral functional regulators shall promulgate regula-  
2       tions requiring a person described in subsection  
3       (a)(2) to prevent restricted transactions by estab-  
4       lishing policies and procedures that—

5               “(A) (i) are reasonably designed to allow  
6               the payment system and any person involved in  
7               the payment system to identify restricted trans-  
8               actions by means of codes in authorization mes-  
9               sages or by other means; and

10              “(ii) are reasonably designed to block re-  
11              stricted transactions identified as a result of the  
12              policies and procedures developed under clause  
13              (i); or

14              “(B) prevent the acceptance of the prod-  
15              ucts or services of the payment system in con-  
16              nection with a restricted transaction.

17       “(2) REQUIREMENTS FOR POLICIES AND PRO-  
18       CEDURES.—In promulgating regulations under para-  
19       graph (1), the Federal functional regulators shall—

20              “(A) identify types of policies and proce-  
21              dures, including nonexclusive examples, that  
22              shall be considered to be reasonably designed to  
23              identify and reasonably designed to block or to  
24              prevent the acceptance of the products or serv-

ices in connection with each type of restricted transaction, including—

“(i) identifying transactions by a code or codes in the authorization message; and

“(ii) denying authorization of a credit card transaction in response to an authorization message; and

“(B) to the extent practicable, permit any participant in a designated payment system to choose among alternative means of identifying and blocking, or otherwise preventing the acceptance of the products or services of the designated payment system or participant in connection with, restricted transactions.

“(3) COMPLIANCE WITH PAYMENT SYSTEM POLICIES AND PROCEDURES.—A person described in subsection (a)(2)(B) meets the requirement of paragraph (1) if—

“(A) the person relies on and complies with the policies and procedures of a designated payment system of which the person is a member or in which the person is a participant, to—

“(i) identify and block restricted transactions; or

1                   “(ii) otherwise prevent the acceptance  
2                   of the products or services of the payment  
3                   system, member, or participant in connec-  
4                   tion with restricted transactions; and

5                   “(B) such policies and procedures of the  
6                   designated payment system comply with the re-  
7                   quirements of regulations promulgated under  
8                   paragraph (1).

9                   “(4) NO LIABILITY FOR BLOCKING OR REFUS-  
10                  ING TO HONOR RESTRICTED TRANSACTION.—A per-  
11                  son that is subject to a regulation or an order issued  
12                  under this section and blocks or otherwise refuses to  
13                  honor a restricted transaction (or a transaction that  
14                  such person reasonably believes to be a restricted  
15                  transaction) or as a member of a designated pay-  
16                  ment system, relies on the policies and procedures of  
17                  the payment system in an effort to comply with reg-  
18                  ulations promulgated under this section, shall not be  
19                  liable to any party for such action.

20                  “(5) ENFORCEMENT.—

21                  “(A) IN GENERAL.—This section shall be  
22                  enforced by the Federal functional regulators  
23                  and the Federal Trade Commission under appli-  
24                  cable law in the manner provided in section



1           505(a) of the Gramm-Leach-Bliley Act (21  
2           U.S.C. 6805(a)).

3           “(B) FACTORS TO BE CONSIDERED.—In  
4           considering any enforcement action under this  
5           subsection against a payment system or person  
6           described in subsection (a)(2)(B), the Federal  
7           functional regulators and the Federal Trade  
8           Commission shall consider the following factors:

9                   “(i) The extent to which the person is  
10                   extending credit or transmitting funds  
11                   knowing the transaction is in connection  
12                   with an unlawful Internet pharmacy re-  
13                   quest.

14                   “(ii) The history of the person in ex-  
15                   tending credit or transmitting funds know-  
16                   ing the transaction is in connection with  
17                   an unlawful Internet pharmacy request.

18                   “(iii) The extent to which the person  
19                   has established and is maintaining policies  
20                   and procedures in compliance with regula-  
21                   tions prescribed under this subsection.

22                   “(iv) The feasibility that any specific  
23                   remedy prescribed can be implemented by  
24                   the person without substantial deviation  
25                   from normal business practice.

1                   “(v) The costs and burdens the spe-  
2                   cific remedy will have on the person.

3           “(f) REPORTS REGARDING INTERNET-RELATED VIO-  
4   LATIONS OF FEDERAL AND STATE LAWS ON DISPENSING  
5   OF DRUGS.—The Secretary shall, pursuant to the submis-  
6   sion of an application meeting criteria prescribed by the  
7   Secretary, make an award of a grant or contract to an  
8   entity with experience in developing and maintaining sys-  
9   tems for the purpose of—

10           “(1) identifying Internet pharmacy websites  
11           that are not licensed or that appear to be operating  
12           in violation of Federal or State laws concerning the  
13           dispensing of drugs;

14           “(2) reporting such Internet pharmacy websites  
15           to State medical licensing boards and State phar-  
16           macy licensing boards, and to the Attorney General  
17           and the Secretary, for further investigation; and

18           “(3) submitting, for each fiscal year for which  
19           the award under this subsection is made, a report to  
20           the Secretary describing investigations undertaken  
21           with respect to violations described in paragraph  
22           (1).”.

23           (b) PROHIBITED ACT.—Section 301 of the Federal  
24   Food, Drug, and Cosmetic Act (21 U.S.C. 331) (as

1 amended by section 2(b)) is amended by adding at the  
2 end the following:

3 “(ii) The sale of a prescription drug, or the ownership  
4 or operation of an Internet pharmacy, in violation of sec-  
5 tion 511.

6 “(jj) The representation by advertisement, sales pres-  
7 entation, direct communication (including telephone, fac-  
8 simile, or electronic mail), or otherwise by an Internet  
9 pharmacy, that a prescription drug may be obtained from  
10 the Internet pharmacy without a prescription, in violation  
11 of section 511.

12 “(kk) The acceptance of an advertisement from an  
13 Internet pharmacy by the provider of an interactive com-  
14 puter service, unless the provider has on file a copy of  
15 the license issued to the Internet pharmacy under section  
16 511.”.

17 (c) LINKS TO ILLEGAL INTERNET PHARMACIES.—  
18 Section 302 of the Federal Food, Drug, and Cosmetic Act  
19 (21 U.S.C. 332) is amended by adding at the end the fol-  
20 lowing:

21 “(c) (1) In the case of a violation of section 511 relat-  
22 ing to an illegal Internet pharmacy, the district courts of  
23 the United States and the United States courts of the ter-  
24 ritories shall have jurisdiction to order a provider of an  
25 interactive computer service to remove, or disable access

1 to, a website violating that section that resides on a com-  
2 puter server that the provider controls or operates.

3 “(2) Relief under paragraph (1)—

4 “(A) shall be available only after provision to  
5 the provider of notice and an opportunity to appear;

6 “(B) shall not impose any obligation on the  
7 provider to monitor its service or to affirmatively  
8 seek facts indicating activity violating section 511;  
9 and

10 “(C) shall specify the provider to which the re-  
11 lief applies.”.

12 (d) REGULATIONS.—

13 (1) IN GENERAL.—Not later than 1 year after  
14 the date of enactment of this Act, the Secretary of  
15 Health and Human Services shall promulgate in-  
16 terim final regulations that are consistent with the  
17 Verified Internet Pharmacy Sites certification pro-  
18 gram developed by the National Association of  
19 Boards of Pharmacy to carry out the amendments  
20 made by this section.

21 (2) EFFECTIVE DATE.—The requirement of li-  
22 censure under section 511 of the Federal Food,  
23 Drug, and Cosmetic Act (as added by this section)  
24 shall take effect on the date determined by the Sec-  
25 retary of Health and Human Services but in no

1 event later than 90 days after the effective date of  
2 the interim final regulations under paragraph (1).

3 (e) RETURN TO SENDER.—Section 801 of the Fed-  
4 eral Food, Drug, and Cosmetic Act (21 U.S.C. 381) is  
5 amended by adding at the end the following:

6 “(p) UNLICENSED INTERNET PHARMACY.—If an  
7 Internet pharmacy is not licensed by the Secretary in ac-  
8 cordance with section 511, any shipment of a prescription  
9 drug from such an Internet pharmacy to an individual  
10 shall be refused admission into the United States and the  
11 Secretary shall return the prescription drug, other than  
12 a prescription drug that is required to be destroyed, to  
13 the Internet pharmacy at the expense of the Internet phar-  
14 macy.

15 “(q) LICENSED INTERNET PHARMACY.—If a ship-  
16 ment of a prescription drug from an Internet pharmacy  
17 licensed by the Secretary in accordance with section 511  
18 to an individual is refused admission into the United  
19 States, the Secretary shall—

20 “(1) return the prescription drug, other than a  
21 prescription drug that is required to be destroyed, to  
22 the Internet pharmacy at the expense of the Internet  
23 pharmacy; and

24 “(2) provide the individual and the Internet  
25 pharmacy with a written notice that informs the in-

1       dividual and the Internet pharmacy of the refusal  
2       and of the reason for the refusal.”.

3   **SEC. 5. ADMINISTRATIVE DETENTION AND TEMPORARY**  
4       **HOLD.**

5       (a) IN GENERAL.—The Federal Food, Drug, and  
6   Cosmetic Act is amended by adding after section 815 (as  
7   added by section 9) the following:

8   **“SEC. 816. ADMINISTRATIVE DETENTION.**

9       “(a) ADMINISTRATIVE DETENTION OF PRESCRIP-  
10   TION DRUGS.—

11       “(1) DETENTION AUTHORITY.—

12       “(A) IN GENERAL.—An officer or qualified  
13       employee of the Food and Drug Administration  
14       may order the detention, in accordance with  
15       this subsection, of any prescription drug that is  
16       found during an inspection, examination, or in-  
17       vestigation under this Act conducted by the of-  
18       ficer or qualified employee, if the officer or  
19       qualified employee has credible evidence or in-  
20       formation indicating that the prescription drug  
21       presents a risk to the public health.

22       “(B) APPROVAL.—A prescription drug  
23       may be detained under subparagraph (A) only  
24       if the Secretary or an official designated by the  
25       Secretary approves the order of detention.

1           “(2) PERIOD OF DETENTION.—A prescription  
2       drug may be detained under paragraph (1) for a  
3       reasonable period, not to exceed 20 days, unless a  
4       greater period, not to exceed 30 days, is necessary,  
5       to enable the Secretary to commence an action  
6       under this subsection or section 302.

7           “(3) SECURITY OF DETAINED ARTICLE.—

8               “(A) IN GENERAL.—An order under para-  
9       graph (1) with respect to a prescription drug—

10                   “(i) may require that the prescription  
11                   drug be labeled or marked as detained; and

12                   “(ii) shall require that the prescrip-  
13                   tion drug be removed to a secure facility,  
14                   as appropriate.

15               “(B) NO TRANSFER.—A prescription drug  
16       subject to an order under paragraph (1) shall  
17       not be transferred by any person from the place  
18       at which the prescription drug is ordered de-  
19       tained or from the place to which the prescrip-  
20       tion drug is removed, until released by the Sec-  
21       retary or until the expiration of the detention  
22       period applicable under the order, whichever oc-  
23       curs first.

24               “(C) EFFECT OF PARAGRAPH.—This para-  
25       graph does not authorize the delivery of a pre-

1           prescription drug pursuant to the execution of a  
2           bond while the prescription drug is subject to  
3           an order under paragraph (1).

4           “(D) EFFECT OF BONDING PROVISION.—  
5           Section 801(b) does not authorize the delivery  
6           of a prescription drug pursuant to the execution  
7           of a bond while the prescription drug is subject  
8           to an order under paragraph (1).

9           “(4) APPEAL OF DETENTION ORDER.—

10           “(A) IN GENERAL.—With respect to a pre-  
11           scription drug detained under paragraph (1),  
12           any person that would be entitled to be a claim-  
13           ant for the prescription drug if the prescription  
14           drug were seized under paragraph (1) may ap-  
15           peal the order of detention to the Secretary.

16           “(B) ACTION BY THE SECRETARY.—Not  
17           later than 5 days after an appeal is filed, the  
18           Secretary, after providing opportunity for an in-  
19           formal hearing, shall confirm or terminate the  
20           order, and confirmation by the Secretary shall  
21           be considered to be a final agency action for  
22           purposes of section 702 of title 5, United States  
23           Code.

24           “(C) FAILURE TO ACT.—If, during the 5-  
25           day period specified in subparagraph (B), the



1 Secretary fails to provide an opportunity for  
2 hearing or to confirm or terminate the order,  
3 the order shall be deemed to be terminated.

4 “(D) EFFECT OF COMMENCEMENT OF  
5 COURT ACTION.—The process under this para-  
6 graph for the appeal of an order under para-  
7 graph (1) with respect to a prescription drug  
8 terminates if the Secretary commences an ac-  
9 tion under subsection (a) or section 302 regard-  
10 ing the prescription drug.

11 “(b) EFFECT OF SECTION.—Nothing in this section  
12 applies to a prescription drug imported by an individual  
13 under section 812 or to a commercial transaction con-  
14 ducted between an Internet pharmacy and an individual.”.

15 (b) TEMPORARY HOLD AT PORT OF ENTRY.—Sec-  
16 tion 801 of the Federal Food, Drug, and Cosmetic Act  
17 (21 U.S.C. 381) (as amended by section 4(e)) is amended  
18 by adding at the end the following:

19 “(r) TEMPORARY HOLD AT PORT OF ENTRY.—

20 “(1) IN GENERAL.—If an officer or qualified  
21 employee of the Food and Drug Administration has  
22 credible evidence or information indicating that a  
23 prescription drug presents a risk to the public  
24 health, and the officer or qualified employee is un-  
25 able to inspect, examine, or investigate the prescrip-

1       tion drug upon the prescription drug's being offered  
2       for import at a port of entry into the United States,  
3       the officer or qualified employee shall request the  
4       Secretary of the Treasury to hold the prescription  
5       drug at the port of entry for a reasonable period of  
6       time, not to exceed 24 hours, for the purpose of ena-  
7       bling the Secretary to inspect, examine, or inves-  
8       tigate the prescription drug as appropriate.

9               “(2) APPROVAL.—

10              “(A) IN GENERAL.—An officer or qualified  
11              employee of the Food and Drug Administration  
12              may make a request under paragraph (1) only  
13              if the Secretary or an official designated by the  
14              Secretary approves the request.

15              “(B) DESIGNEES.—An official may not be  
16              designated under subparagraph (A) unless the  
17              official is the director of the district under this  
18              Act in which the prescription drug is located, or  
19              is an official senior to that director.

20              “(3) NOTIFICATION.—With respect to a pre-  
21              scription drug for which a request under paragraph  
22              (1) is made, the Secretary, promptly after the re-  
23              quest is made, shall notify the State in which the  
24              port of entry involved is located that the request has

1       been made, and as applicable, that the prescription  
2       drug, is being held under this subsection.

3           “(4) REMOVAL.—A prescription drug held  
4       under paragraph (1) shall be removed to a secure fa-  
5       cility, as appropriate.

6           “(5) NO TRANSFER.—During the period in  
7       which a prescription drug is held under this sub-  
8       section, the prescription drug shall not be trans-  
9       ferred by any person from the port of entry into the  
10      United States for the prescription drug or from the  
11      secure facility to which the prescription drug has  
12      been removed.

13          “(6) EFFECT OF BONDING PROVISION.—Sub-  
14      section (b) does not authorize the delivery of a pre-  
15      scription drug held under this subsection pursuant  
16      to the execution of a bond while the prescription  
17      drug is held under this subsection.

18          “(7) EFFECT OF SUBSECTION.—Nothing in this  
19      subsection applies to a prescription drug imported  
20      by an individual under section 812 or to a commer-  
21      cial transaction conducted between an Internet phar-  
22      macy and an individual.”.

23          (c) PROHIBITED ACT.—Section 301 of the Federal  
24      Food, Drug, and Cosmetic Act (21 U.S.C. 331) (as

1 amended by section 4(b)) is amended by adding at the  
2 end the following:

3 “(ll) The transfer of a prescription drug in violation  
4 of an order under section 816, or the removal or alteration  
5 of any mark or label required by the order to identify the  
6 prescription drug as detained.”.

7 **SEC. 6. SUSPENSION.**

8 (a) IN GENERAL.—The Federal Food, Drug, and  
9 Cosmetic Act is amended by adding after section 816 (as  
10 added by section 5) the following:

11 **“SEC. 817. SUSPENSION OF IMPORTATION.**

12 “(a) PRESCRIPTION DRUG.—If the Secretary deter-  
13 mines that the importation of a particular prescription  
14 drug or particular dosage form of a prescription drug into  
15 the United States presents a risk to the public health, the  
16 Secretary may immediately order the suspension of the  
17 importation of the particular prescription drug or par-  
18 ticular dosage form of the prescription drug.

19 “(b) SUSPENSION.—If the Secretary determines that  
20 a drug importation facility, pharmacy, Internet pharmacy,  
21 or wholesaler is engaged in a pattern of importing or offer-  
22 ing for importation a prescription drug into the United  
23 States in violation of any of the requirements of this Act,  
24 the Secretary may immediately order the suspension of  
25 that person from engaging in the importation or offering

1 for importation of prescription drugs into the United  
2 States.

3 “(c) CANADA OR PERMITTED COUNTRY.—If the Sec-  
4 retary determines that there is a pattern of prescription  
5 drugs being imported or offered for importation into the  
6 United States from Canada or a permitted country in vio-  
7 lation of any of the requirements of this Act, the Secretary  
8 may immediately order the suspension of the importation  
9 or offering for importation into the United States of pre-  
10 scription drugs from Canada or that permitted country,  
11 as appropriate.

12 “(d) APPEAL OF SUSPENSION ORDER.—

13 “(1) IN GENERAL.—

14 “(A) PRESCRIPTION DRUGS.—With respect  
15 to the importation of a prescription drug, the  
16 importation of which is suspended under sub-  
17 section (a), any person that would be entitled to  
18 be a claimant for the prescription drug may ap-  
19 peal the suspension order to the Secretary.

20 “(B) SUSPENDED PERSONS.—With respect  
21 to a drug importation facility, pharmacy, Inter-  
22 net pharmacy, or wholesaler subject to a sus-  
23 pension order under subsection (b) or (c), the  
24 drug importation facility, pharmacy, Internet

1           pharmacy or wholesaler may appeal the suspen-  
2           sion order to the Secretary.

3           “(2) ACTION BY THE SECRETARY.—Not later  
4           than 30 days after an appeal is filed, the Secretary,  
5           after providing opportunity for an informal hearing,  
6           shall confirm or terminate the order.

7           “(3) FAILURE TO ACT.—If, during the 30-day  
8           period specified in paragraph (2), the Secretary fails  
9           to provide an opportunity for a hearing or to con-  
10          firm or terminate the order, the order shall be  
11          deemed to be terminated.

12          “(e) NO JUDICIAL REVIEW.—An order under this  
13          section shall not be subject to judicial review.

14          “(f) EFFECT OF SECTION.—Nothing in this section  
15          applies to a prescription drug imported by an individual  
16          under section 812 or to a commercial transaction con-  
17          ducted between an Internet pharmacy and an individual.”.

18          (b) PROHIBITED ACT.—Section 301 of the Federal  
19          Food, Drug, and Cosmetic Act (21 U.S.C. 331) (as  
20          amended by section 5(c)) is amended by adding at the end  
21          the following:

22          “(mm) The importation or offering for importation  
23          of a prescription drug in violation of an order under sec-  
24          tion 817.”.

1 **SEC. 7. DEBARMENT FOR REPEATED OR SERIOUS PRE-**  
2 **SCRIPTION DRUG IMPORTATION VIOLA-**  
3 **TIONS.**

4 (a) DEBARMENT AUTHORITY.—

5 (1) PERMISSIVE DEBARMENT.—Section  
6 306(b)(1) of the Federal Food, Drug, and Cosmetic  
7 Act (21 U.S.C. 335a(b)(1)) is amended—

8 (A) in subparagraph (B), by striking “or”  
9 at the end;

10 (B) in subparagraph (C), by striking the  
11 period at the end and inserting “, or”; and

12 (C) by adding at the end the following:

13 “(D) a person from importing a prescrip-  
14 tion drug or offering a prescription drug for im-  
15 portation into the United States.”.

16 (2) AMENDMENT REGARDING DEBARMENT  
17 GROUNDS.—Section 306(b) of the Federal Food,  
18 Drug, and Cosmetic Act (21 U.S.C. 335a(b)) is  
19 amended—

20 (A) by redesignating paragraph (4) as  
21 paragraph (5); and

22 (B) by inserting after paragraph (3) the  
23 following:

24 “(4) PERSONS SUBJECT TO PERMISSIVE DE-  
25 BARMENT; PRESCRIPTION DRUG IMPORTATION.—

1           “(A) IN GENERAL.—A person is subject to  
2           debarment under paragraph (1)(D) if—

3                   “(i) the person has been convicted of  
4                   a felony for conduct relating to the impor-  
5                   tation into the United States of any pre-  
6                   scription drug; or

7                   “(ii) the person has engaged in a pat-  
8                   tern of importing or offering for import a  
9                   prescription drug that presents a risk to  
10                  the public health.

11           “(B) EFFECT OF PARAGRAPH.—Nothing  
12           in this paragraph applies to a prescription drug  
13           imported by an individual under section 812 or  
14           to a commercial transaction conducted between  
15           an Internet pharmacy and an individual.”.

16           (b) CONFORMING AMENDMENTS.—Section 306 of the  
17   Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a)  
18   is amended—

19                   (1) in subsection (b), by striking the subsection  
20           heading and inserting the following:

21                   “(b) PERMISSIVE DEBARMENT; CERTAIN DRUG AP-  
22   PLICATIONS; IMPORTS.—”;

23                   (2) in subsection (c)(2)(A)(iii), by striking  
24           “paragraph (2) or (3) of subsection (b)” and insert-



1 ing “paragraph (2), (3), or (4) of subsection (b)”;  
 2 and

3 (3) in subsection (d)(3)—

4 (A) in subparagraph (A)(i), by striking “or  
 5 paragraph (2)(A) or (3) of subsection (b)” and  
 6 inserting “paragraph (2)(A), (3), or (4) of sub-  
 7 section (b)”;

8 (B) in clauses (i) and (ii) of subparagraph  
 9 (B), by striking “or subsection (b)(3)” and in-  
 10 serting “paragraph (3) or (4) of subsection  
 11 (b)”;

12 (C) in subparagraph (B)(ii), by striking  
 13 “or the food importation process, as the case  
 14 may be” and inserting “, or the food or pre-  
 15 scription drug importation process, as the case  
 16 may be”.

17 (c) EFFECTIVE DATE.—Section 306(l)(2) of the Fed-  
 18 eral Food, Drug, and Cosmetic Act (21 U.S.C. 335a(l)(2))  
 19 is amended—

20 (1) in the first sentence, by striking “and sub-  
 21 section (b)(3)(A)” and inserting “subsection  
 22 (b)(3)(A), and subsection (b)(4)(A)”;

23 (2) in the second sentence, by inserting “, sub-  
 24 section (b)(4)(B),” after “subsection (b)(3)(B)”.

1 (d) PROHIBITED ACT.—Section 301 of the Federal  
 2 Food, Drug, and Cosmetic Act (21 U.S.C. 331) (as  
 3 amended by section 6(b)) is amended by adding at the  
 4 end the following:

5 “(nn) The importing or offering for importation into  
 6 the United States of a prescription drug by, with the as-  
 7 sistance of, or at the direction of a person debarred under  
 8 section 306(b)(4).”.

9 (e) IMPORTATION BY DEBARRED PERSONS.—Section  
 10 801 of the Federal Food, Drug, and Cosmetic Act (21  
 11 U.S.C. 381) (as amended by section 5(b)) is amended by  
 12 adding at the end the following:

13 “(s) IMPORTATION OF PRESCRIPTION DRUGS BY  
 14 DEBARRED PERSONS.—

15 “(1) IN GENERAL.—If a prescription drug is  
 16 imported or offered for importation into the United  
 17 States, and the importer, owner, or consignee of the  
 18 prescription drug is a person that has been debarred  
 19 under section 306(b)(4), the prescription drug—

20 “(A) shall be held at the port of entry for  
 21 the prescription drug; and

22 “(B) may not be delivered to the person.

23 “(2) EFFECT OF BONDING PROVISION.—Sub-  
 24 section (b) does not authorize the delivery of a pre-  
 25 scription drug pursuant to the execution of a bond

1 while the prescription drug is held under this sub-  
2 section.

3 “(3) REMOVAL.—A prescription drug held  
4 under this subsection shall be removed to a secure  
5 facility, as appropriate.

6 “(4) NO TRANSFER.—During a period in which  
7 a prescription drug is held under this subsection, the  
8 prescription drug shall not be transferred by any  
9 person from the port of entry into the United States  
10 for the prescription drug or from the secure facility  
11 to which the prescription drug has been removed.

12 “(5) PERMISSIBLE DELIVERY.—A prescription  
13 drug held under this subsection may be delivered to  
14 a person that is not a debarred person under section  
15 306(b)(4) if the person affirmatively establishes, at  
16 the expense of the person, that the prescription drug  
17 complies with the requirements of this Act, as deter-  
18 mined by the Secretary.”.

19 **SEC. 8. REGISTRATION OF PRESCRIPTION DRUG IMPORTA-**  
20 **TION FACILITIES.**

21 (a) REGISTRATION OF CERTAIN IMPORTERS.—The  
22 Federal Food, Drug, and Cosmetic Act is amended by  
23 adding after section 813 (as added by section 2) the fol-  
24 lowing:

1 **“SEC. 814. REGISTRATION OF CERTAIN IMPORTERS.**

2       “(a) IN GENERAL.—A drug importation facility,  
3 pharmacy, Internet pharmacy, or wholesaler engaged in  
4 the importation or offering for importation of prescription  
5 drugs into the United States, or in the dispensing of such  
6 drugs, shall register with the Secretary in accordance with  
7 this section.

8       “(b) REGISTRATION.—

9               “(1) IN GENERAL.—To register, the owner, op-  
10 erator, or agent in charge of a drug importation fa-  
11 cility, pharmacy, Internet pharmacy, or wholesaler  
12 shall submit to the Secretary a registration that dis-  
13 closes—

14                       “(A) the name and address of each drug  
15 importation facility, pharmacy, Internet phar-  
16 macy, or wholesaler at which, and all trade  
17 names under which, the registrant conducts  
18 business;

19                       “(B) the name of each prescription drug to  
20 be imported into the United States by each  
21 drug importation facility, pharmacy, Internet  
22 pharmacy, or wholesaler; and

23                       “(C) the name and address of an agent for  
24 service of process in the United States.

25               “(2) CHANGE IN INFORMATION.—The reg-  
26 istrant shall notify the Secretary in a timely manner

1 of any change in the information provided under  
2 paragraph (1).

3 “(3) PROCEDURE.—Not later than 60 days  
4 after receipt of a completed registration under para-  
5 graph (1), the Secretary shall—

6 “(A) assign a registration number to each  
7 registered drug importation facility, pharmacy,  
8 Internet pharmacy, and wholesaler; and

9 “(B) notify the registrant of the receipt of  
10 the registration.

11 “(4) LIST.—

12 “(A) IN GENERAL.—The Secretary shall  
13 compile, maintain, and periodically update a list  
14 of registrants.

15 “(B) AVAILABILITY.—The Secretary shall  
16 make the list described under subparagraph (A)  
17 and information submitted by a registrant  
18 under paragraph (1) available to the public on  
19 an Internet website and through a toll-free tele-  
20 phone number.

21 “(c) ELECTRONIC FILING.—

22 “(1) IN GENERAL.—For the purpose of reduc-  
23 ing paperwork and reporting burdens, the Secretary  
24 shall provide for, and require the use of, electronic  
25 methods of submitting to the Secretary registrations

1 required under this section and shall provide for  
2 electronic methods of receiving the registrations.

3 “(2) AUTHENTICATION.—In providing for the  
4 electronic submission of such registrations under  
5 this section, the Secretary shall ensure that ade-  
6 quate authentication protocols are used to allow  
7 identification of the registrant and validation of the  
8 data as appropriate.

9 “(d) EFFECT OF SECTION.—

10 “(1) AUTHORITY.—Nothing in this section  
11 authorizes the Secretary to require an applica-  
12 tion, review, or licensing process for a drug im-  
13 portation facility, pharmacy, or wholesaler.

14 “(2) IMPORTATION BY INDIVIDUALS.—  
15 Nothing in this section applies to a prescription  
16 drug imported by an individual under section  
17 812 or to a commercial transaction conducted  
18 between an Internet pharmacy and an indi-  
19 vidual.”.

20 (b) REGULATIONS.—

21 (1) IN GENERAL.—Not later than 1 year after  
22 the date of enactment of this Act, the Secretary of  
23 Health and Human Services shall promulgate regu-  
24 lations to carry out section 814 of the Federal Food,  
25 Drug, and Cosmetic Act (as added by this section).

1           (2) EFFECTIVE DATE.—The requirement of  
2       registration under section 814 of the Federal Food,  
3       Drug, and Cosmetic Act takes effect—

4                   (A) on the effective date of the final regu-  
5       lations under paragraph (1); or

6                   (B) if the final regulations have not been  
7       made effective as of the expiration of that pe-  
8       riod, on the date that is 1 year after the date  
9       of enactment of this Act, subject to compliance  
10      with the final regulations when the final regula-  
11      tions are made effective.

12      (c) IMPORTATION; FAILURE TO REGISTER.—Section  
13      801 of the Federal Food, Drug, and Cosmetic Act (21  
14      U.S.C. 381) (as amended by section 7(e)) is amended by  
15      adding at the end the following:

16      “(t) FAILURE TO REGISTER.—

17           “(1) IN GENERAL.—If a drug importation facil-  
18      ity, pharmacy, Internet pharmacy, or wholesaler en-  
19      gaged in the importation or offering for importation  
20      of prescription drugs into the United States has not  
21      submitted a registration to the Secretary in accord-  
22      ance with section 814, a prescription drug that is  
23      being imported or offered for importation into the  
24      United States shall not be delivered to the importer,  
25      owner, or consignee of the prescription drug until

1 the drug importation facility, pharmacy, Internet  
2 pharmacy, or wholesaler is registered in accordance  
3 with section 814.

4 “(2) EFFECT OF SUBSECTION (B).—Subsection  
5 (b) does not authorize the delivery of the prescrip-  
6 tion drug pursuant to the execution of a bond while  
7 the prescription drug is held under this subsection.

8 “(3) REMOVAL.—A prescription drug held  
9 under this subsection shall be removed to a secure  
10 facility, as appropriate.

11 “(4) NO TRANSFER.—During the period in  
12 which a prescription drug is held under this sub-  
13 section, the prescription drug shall not be trans-  
14 ferred by any person from the port of entry into the  
15 United States for the prescription drug or from the  
16 secure facility to which the prescription drug has  
17 been removed.”.

18 (d) PROHIBITED ACT.—Section 301 of the Federal  
19 Food, Drug, and Cosmetic Act (21 U.S.C. 331) (as  
20 amended by section 7(d)) is amended by adding at the  
21 end the following:

22 “(oo) The failure of a drug importation facility, phar-  
23 macy, Internet pharmacy, or wholesaler engaged in the  
24 importation or offering for importation of prescription



1 drugs into the United States, or in the dispensing of such  
2 drugs, to register in accordance with section 814.”.

3 **SEC. 9. MAINTENANCE AND INSPECTION OF RECORDS FOR**  
4 **PRESCRIPTION DRUGS.**

5 The Federal Food, Drug, and Cosmetic Act is amend-  
6 ed by adding after section 814 (as added by section 8)  
7 the following:

8 **“SEC. 815. MAINTENANCE AND INSPECTION OF RECORDS**  
9 **FOR PRESCRIPTION DRUGS.**

10 “(a) IN GENERAL.—The Secretary may by regulation  
11 establish requirements relating to the establishment and  
12 maintenance, for not longer than 2 years, of records by—

13 “(1) a drug importation facility, pharmacy,  
14 Internet pharmacy, or wholesaler engaged in the im-  
15 portation of prescription drugs into the United  
16 States, or in the dispensing of such drugs; and

17 “(2) any person that processes, packages, dis-  
18 tributes, receives, holds, or transports a prescription  
19 drug imported under this subchapter.

20 “(b) INSPECTION.—

21 “(1) IN GENERAL.—If the Secretary has reason  
22 to believe that a prescription drug imported under  
23 this subchapter presents a risk to the public health,  
24 the drug importation facility, pharmacy, Internet  
25 pharmacy, or wholesaler that imports the prescrip-

1       tion drug, and each person that processes, packages,  
2       distributes, receives, holds, or transports the pre-  
3       scription drug shall, at the request of an officer or  
4       employee duly designated by the Secretary, permit  
5       the officer or employee, upon presentation of appro-  
6       priate credentials and a written notice to such phar-  
7       macy or person, at reasonable times, within reason-  
8       able limits and in a reasonable manner, to have ac-  
9       cess to and copy all records relating to the prescrip-  
10      tion drug that are needed to enable the Secretary to  
11      determine whether the prescription drug presents a  
12      risk to the public health.

13           “(2) APPLICABILITY.—Paragraph (1) applies to  
14      all records maintained by or on behalf of the drug  
15      importation facility, pharmacy, Internet pharmacy,  
16      or wholesaler or such other person in any format  
17      (including paper and electronic formats) and at any  
18      location.

19           “(c) PROTECTION OF SENSITIVE INFORMATION.—  
20      The Secretary shall take appropriate measures to ensure  
21      that there are in effect effective procedures to prevent the  
22      unauthorized disclosure of any trade secret or confidential  
23      information that is obtained by the Secretary under this  
24      section or any commercial or financial information that  
25      is privileged or confidential.

1       “(d) EFFECT OF SECTION.—Nothing in this section  
 2 applies to a prescription drug imported by an individual  
 3 under section 812 or to a commercial transaction con-  
 4 ducted between an Internet pharmacy and an individual.”.

5       **SEC. 10. ADVANCE NOTICE OF IMPORTED PRESCRIPTION**  
 6                               **DRUG SHIPMENTS.**

7       (a) IN GENERAL.—Section 801 of the Federal Food,  
 8 Drug, and Cosmetic Act (as amended by section 8(b)) is  
 9 amended by adding at the end the following:

10       “(u) ADVANCE NOTICE OF IMPORTED PRESCRIPTION  
 11 DRUG SHIPMENTS.—

12               “(1) IN GENERAL.—For purposes of enabling  
 13 the Secretary to inspect at ports of entry a prescrip-  
 14 tion drug that is being imported or offered for im-  
 15 portation into the United States, the person import-  
 16 ing or offering for importation the prescription drug  
 17 shall, in advance, provide to the Secretary a notice  
 18 that includes—

19               “(A) the established name (as defined by  
 20 section 502(e)), dosage form, and quantity of  
 21 the prescription drug;

22               “(B) the name of the shipper of the pre-  
 23 scription drug;

24               “(C) the name of the country from which  
 25 the prescription drug originates;

1           “(D) the country from which the prescrip-  
2           tion drug is shipped;

3           “(E) the name of the port of entry of the  
4           prescription drug;

5           “(F) documentation from the drug impor-  
6           tation facility located in Canada or a permitted  
7           country specifying—

8                 “(i) the original source of the pre-  
9                 scription drug; and

10                “(ii) the quantity of each lot of the  
11                prescription drug originally received by the  
12                facility from that source;

13           “(G) the lot or control number assigned to  
14           the prescription drug by the manufacturer of  
15           the prescription drug;

16           “(H) the name, address, telephone num-  
17           ber, and professional license number of the  
18           drug importation facility located in Canada or  
19           a permitted country; and

20           “(I) certification from the drug importa-  
21           tion facility located in a foreign country or from  
22           the manufacturer of the prescription drug that  
23           the prescription drug—

1                   “(i) is approved for marketing in the  
2                   United States and is not adulterated or  
3                   misbranded; and

4                   “(ii) meets all labeling requirements  
5                   under this Act.

6                   “(2) REFUSAL OF ADMISSION.—A prescription  
7                   drug imported or offered for importation without  
8                   submission of a notice under paragraph (1) shall be  
9                   refused admission into the United States.

10                  “(3) PERIOD OF ADVANCE NOTICE.—The pe-  
11                  riod in which the notice under paragraph (1) is re-  
12                  quired to be made in advance of the time of the im-  
13                  portation of a prescription drug or the offering of a  
14                  prescription drug for importation shall be not less  
15                  than 24 hours and not more than 5 days.

16                  “(4) FAILURE TO PROVIDE NOTICE.—

17                  “(A) IN GENERAL.—If a prescription drug  
18                  is being imported or offered for importation  
19                  into the United States and notice is not pro-  
20                  vided in advance in accordance with paragraph  
21                  (1), the prescription drug shall be held at the  
22                  port of entry for the prescription drug, and may  
23                  not be delivered to the importer, owner, or con-  
24                  signee of the prescription drug, until the notice  
25                  is submitted to the Secretary and the Secretary

1 examines the notice and determines that the no-  
2 tice is in accordance with the requirements  
3 under paragraph (1).

4 “(5) EFFECT OF BONDING PROVISION.—Sub-  
5 section (b) does not authorize the delivery of a pre-  
6 scription drug pursuant to the execution of a bond  
7 while the prescription drug is held under this sub-  
8 section.

9 “(6) REMOVAL.—A prescription drug held  
10 under this subsection shall be removed to a secure  
11 facility, as appropriate.

12 “(7) NO TRANSFER.—During a period in which  
13 a prescription drug is held under this subsection, the  
14 prescription drug shall not be transferred by any  
15 person from the port of entry into the United States  
16 for the article or from the secure facility to which  
17 the prescription drug has been removed.

18 “(8) EFFECT OF SUBSECTION.—

19 “(A) AUTHORITY.—This subsection does  
20 not limit the authority of the Secretary to ob-  
21 tain information under any other provision of  
22 this Act.

23 “(B) IMPORTATION BY INDIVIDUALS.—  
24 Nothing in this subsection applies to a prescrip-  
25 tion drug imported by an individual under sec-

1           tion 812 or to a commercial transaction con-  
 2           ducted between an Internet pharmacy and an  
 3           individual.”.

4           (b) PROHIBITED ACT.—Section 301 of the Federal  
 5 Food, Drug, and Cosmetic Act (21 U.S.C. 331) (as  
 6 amended by section 8(c)) is amended by adding at the end  
 7 the following:

8           “(pp) The failure to submit prior notice of the impor-  
 9 tation of a prescription drug in violation of section  
 10 801(s).”.

11 **SEC. 11. AUTHORITY TO MARK PRESCRIPTION DRUGS RE-**  
 12 **FUSED ADMISSION INTO THE UNITED**  
 13 **STATES.**

14           (a) IN GENERAL.—Section 801 of the Federal Food,  
 15 Drug, and Cosmetic Act (21 U.S.C. 381) (as amended by  
 16 section 10(a)) is amended by adding at the end the fol-  
 17 lowing:

18           “(v) PRESCRIPTION DRUGS REFUSED ADMISSION.—

19           “(1) IN GENERAL.—If a prescription drug has  
 20 been refused admission under subsection (a), other  
 21 than such a prescription drug that is required to be  
 22 destroyed, the Secretary may require the owner or  
 23 consignee of the prescription drug to affix to the  
 24 container of the prescription drug a label that clear-

1 ly and conspicuously bears the statement: ‘UNITED  
2 STATES: REFUSED ENTRY’.

3 “(2) EXPENSES.—All expenses in connection  
4 with affixing a label under paragraph (1)—

5 “(A) shall be paid by the owner or con-  
6 signee of the prescription drug; and

7 “(B) in default of such payment, shall con-  
8 stitute a lien against future importations made  
9 by the owner or consignee.

10 “(3) EFFECTIVE PERIOD.—A requirement  
11 under paragraph (1) with respect to a prescription  
12 drug remains in effect until the Secretary deter-  
13 mines that the prescription drug has been brought  
14 into compliance with this Act.

15 “(4) EFFECT OF SUBSECTION.—Nothing in this  
16 subsection applies to a prescription drug imported  
17 by an individual under section 812 or to a commer-  
18 cial transaction conducted between an Internet phar-  
19 macy and an individual.”.

20 (b) MISBRANDED PRESCRIPTION DRUGS.—Section  
21 502 of the Federal Food, Drug, and Cosmetic Act (21  
22 U.S.C. 352) is amended by adding at the end the fol-  
23 lowing:

24 “(w) If—



1           “(1) it is a prescription drug refused admission  
2           into the United States that fails to bear a label re-  
3           quired by the Secretary under section 801(v);

4           “(2) the Secretary finds that the prescription  
5           drug presents a risk to the public health; and

6           “(3) on or after notifying the owner or con-  
7           signee of the prescription drug that the label is re-  
8           quired under section 801(v), the Secretary informs  
9           the owner or consignee that the prescription drug  
10          presents such a risk.”.

11       (c) RULE OF CONSTRUCTION.—With respect to a  
12       prescription drug that is imported or offered for importa-  
13       tion into the United States, nothing in this section limits  
14       the authority of the Secretary of Health and Human Serv-  
15       ices or the Secretary of the Treasury to require the mark-  
16       ing of prescription drugs refused admission under any  
17       other provision of law.

18       **SEC. 12. PROHIBITION OF PORT SHOPPING.**

19       Section 502 of the Federal Food, Drug, and Cosmetic  
20       Act (21 U.S.C. 352) (as amended by section 11(b)) is  
21       amended by adding at the end the following:

22       “(x) PORT SHOPPING.—

23       “(1) IN GENERAL.—If—

1           “(A) it is a prescription drug imported or  
2           offered for importation into the United States;  
3           and

4           “(B) the prescription drug has previously  
5           been refused admission under section 801(a);  
6           unless the person reoffering the prescription drug af-  
7           firmatively establishes, at the expense of the owner  
8           or consignee of the prescription drug, that the pre-  
9           scription drug complies with the applicable require-  
10          ments of this Act, as determined by the Secretary.

11          “(2) EFFECT OF PARAGRAPH.—Nothing in this  
12          paragraph applies to importation of a prescription  
13          drug under section 812 or to a commercial trans-  
14          action conducted between an Internet pharmacy and  
15          an individual.”.

16 **SEC. 13. AUTHORITY TO COMMISSION OTHER FEDERAL**  
17 **AND STATE OFFICIALS TO CONDUCT INSPEC-**  
18 **TIONS.**

19          Section 702(a) of the Federal Food, Drug, and Cos-  
20          metic Act (21 U.S.C. 372(a)) is amended—

21               (1) by redesignating paragraphs (3) and (4) as  
22               paragraphs (5) and (6), respectively; and

23               (2) inserting after paragraph (2) the following:

24               “(3) (A) The Secretary, pursuant to a memo-  
25               randum of understanding between the Secretary and

1 the head of another Federal agency, may conduct  
2 examinations and investigations for the purposes of  
3 enforcing compliance with the amendments made by  
4 the Safe IMPORT Act of 2005 through the officers  
5 and employees of the other agency.

6 “(B) A memorandum of understanding under  
7 subparagraph (A) shall include—

8 “(i) provisions to ensure adequate training  
9 of officers and employees to conduct the exami-  
10 nations and investigations; and

11 “(ii) provisions regarding reimbursement  
12 that may, in the discretion of the head of the  
13 other agency, require reimbursement, in whole  
14 or in part, from the Secretary for the examina-  
15 tions or investigations performed under this  
16 paragraph by the officers or employees of the  
17 other agency.

18 “(C) A memorandum of understanding under  
19 subparagraph (A) shall be effective only with respect  
20 to examinations or inspections at facilities or other  
21 locations that are jointly regulated by the Secretary  
22 and the other agency.

23 “(D) Not later than 60 days after the end of  
24 each fiscal year in which the head of a Federal agen-  
25 cy carries out 1 or more examinations or inspections

1 under a memorandum of understanding under sub-  
2 paragraph (A), the Secretary and the agency head  
3 shall submit to the Committee on Health, Edu-  
4 cation, Labor, and Pensions of the Senate and to  
5 the Committee on Energy and Commerce of the  
6 House of Representatives, a report that discloses,  
7 for that year—

8 “(i) the number of officers or employees  
9 that carried out 1 or more programs, projects,  
10 or activities under the memorandum of under-  
11 standing;

12 “(ii) the number of additional articles that  
13 were inspected or examined as a result of the  
14 memorandum of understanding; and

15 “(iii) the number of additional examina-  
16 tions or investigations that were carried out  
17 pursuant to the memorandum of understanding.

18 “(4) (A) The Secretary may enter into a con-  
19 tract with a State to use the State Board of Phar-  
20 macy personnel of the State to conduct examinations  
21 and inspection for the purpose of carrying out the  
22 amendments made by the Safe IMPORT Act of  
23 2005.

24 “(B) A contract entered into under subpara-  
25 graph (A) shall—

1 “(i) ensure adequate training of officers  
2 and employees to conduct the examinations and  
3 investigations; and

4 “(ii) be effective only with respect to ex-  
5 aminations or inspections of drug importation  
6 facilities, pharmacies, Internet pharmacies, and  
7 wholesalers located in the State.”.

8 **SEC. 14. USER FEES RELATING TO PRESCRIPTION DRUG**  
9 **IMPORTATION.**

10 Subchapter C of chapter VII of the Federal Food,  
11 Drug, and Cosmetic Act (21 U.S.C. 397f et seq.) is  
12 amended by adding at the end the following:

13 **“PART 5—FEES RELATING TO PRESCRIPTION**  
14 **DRUG IMPORTATION**

15 **“SEC. 740A. FEES RELATING TO PRESCRIPTION DRUG IM-**  
16 **PORTATION.**

17 “(a) REGISTRATION FEE.—The Secretary shall es-  
18 tablish a user fee program under which a drug importation  
19 facility, pharmacy, Internet pharmacy, or wholesaler reg-  
20 istering with the Secretary under section 814 shall be re-  
21 quired to pay a fee to the Secretary.

22 “(b) COLLECTION.—

23 “(1) COLLECTION ON INITIAL REGISTRATION.—

24 A fee under this section shall be payable for the fis-  
25 cal year in which the drug importation facility, phar-

1       macy, Internet pharmacy, or wholesaler first reg-  
2       isters under section 814 (or reregisters under that  
3       section if that person has withdrawn its registration  
4       and subsequently reregisters).

5           “(2) COLLECTION IN SUBSEQUENT YEARS.—

6       After the fee is paid for that fiscal year, the fee shall  
7       be payable on or before October 1 of each year.

8           “(3) ONE FEE PER FACILITY.—The fee shall be

9       paid only once for each drug importation facility,  
10      pharmacy, Internet pharmacy, or wholesaler reg-  
11      istered for a fiscal year in which the fee is payable.

12      “(c) FEE AMOUNT.—The amount of the fee shall be  
13      determined each year by the Secretary and shall be based  
14      on the anticipated costs to the Secretary of enforcing the  
15      amendments made by the Safe IMPORT Act of 2005 in  
16      the subsequent fiscal year.

17      “(d) USE OF FEES.—The fees collected under this  
18      section shall be used, without further appropriation, to en-  
19      force the amendments made by the Safe IMPORT Act of  
20      2005.

21      “(e) ANNUAL FEE SETTING.—The Secretary shall  
22      establish, 60 days before the beginning of each fiscal year  
23      beginning after September 30, 2005, for that fiscal year,  
24      registration fees.

25      “(f) EFFECT OF FAILURE TO PAY FEES.—

1           “(1) DUE DATE.—A fee payable under this sec-  
2           tion shall be paid by the date that is 30 days after  
3           the date on which the fee is due.

4           “(2) FAILURE TO PAY.—If a registered drug  
5           importation facility, pharmacy, Internet pharmacy,  
6           or wholesaler subject to a fee under this section fails  
7           to pay the fee, the Secretary shall not permit the  
8           drug importation facility pharmacy, Internet phar-  
9           macy, or wholesaler to engage in importation or of-  
10          fering for importation prescription drugs under this  
11          Act until all such fees owed by that person are paid.

12          “(g) REPORTS.—

13               “(1) FEE ESTABLISHMENT.—Not later than 60  
14               days before each fiscal year, the Secretary shall—

15                   “(A) publish user fees under this section  
16                   for that fiscal year;

17                   “(B) hold a meeting at which the public  
18                   may comment on the recommendations; and

19                   “(C) provide for a period of 30 days for  
20                   the public to provide written comments on the  
21                   recommendations.

22               “(2) PERFORMANCE AND FISCAL REPORT.—Be-  
23               ginning with fiscal year 2006, not later than 60 days  
24               after the end of each fiscal year during which fees  
25               are collected under this section, the Secretary shall

1 submit to the Committee on Health, Education,  
2 Labor, and Pensions of the Senate and the Com-  
3 mittee on Energy and Commerce of the House of  
4 Representatives a report that describes—

5 “(A) implementation of the user fee au-  
6 thority during the fiscal year; and

7 “(B) the use by the Secretary of the fees  
8 collected during the fiscal year for which the re-  
9 port is made.”.

10 **SEC. 15. ANTICOUNTERFEITING PROVISIONS.**

11 (a) **REQUIRED RECORDS.**—Section 503(e) of the  
12 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(e))  
13 is amended by striking paragraph (1) and inserting the  
14 following:

15 “(1) A distributor of record that is engaged in  
16 the wholesale distribution of a drug subject to sub-  
17 section (b), shall—

18 “(A) before each wholesale distribution of the  
19 drug—

20 “(i) with respect to each wholesale dis-  
21 tribution of a drug subject to subsection (b),  
22 provide the person that receives the drug a  
23 statement that identifies the immediately pre-  
24 vious distributor of record from which the drug  
25 was purchased; and



1           “(ii) with respect to a drug subject to sub-  
2           section (b) that is imported to the United  
3           States, provide the person that receives the  
4           drug a statement (in such form and containing  
5           such information as the Secretary may require)  
6           identifying each prior sale, purchase, or trade of  
7           the drug (including the date of transmission  
8           and the names and addresses of all parties to  
9           the transaction); and

10          “(B) create, maintain for 2 years, and make  
11          available to the Secretary for inspection at reason-  
12          able time, records that—

13               “(i) with respect to each wholesale dis-  
14               tribution of a drug subject to subsection (b),  
15               identifies—

16                   “(I) the immediately previous dis-  
17                   tributor of record from which the drug was  
18                   purchased; and

19                   “(II) the immediately subsequent dis-  
20                   tributor of record to which the drug was  
21                   sold or otherwise transferred; and

22               “(ii) with respect to a drug subject to sub-  
23               section (b) that is imported to the United  
24               States, identifies—

1                   “(I) each previous distributor of  
 2                   record from which the drug was purchased  
 3                   or otherwise transferred; and

4                   “(II) each subsequent distributor of  
 5                   record to which the drug was sold or other-  
 6                   wise transferred, to the extent feasible.”.

7           (b) ELECTRONIC TRACK AND TRACE TECH-  
 8 NOLOGY.—Not later than December 31, 2007, the Sec-  
 9 retary of Health and Human Services shall require the  
 10 adoption and use of electronic track and trace technology  
 11 for a prescription drug at the case and pallet level that  
 12 will identify each sale, purchase, or trade of that case or  
 13 pallet (including the date of transmission and the names  
 14 and addresses of all parties to the transaction) .

15           (c) DISTRIBUTORS OF RECORD.—Section 503(e) of  
 16 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
 17 353(e)) is amended by striking paragraph (3) and insert-  
 18 ing the following:

19           “(3) For the purposes of this subsection and sub-  
 20 section (d)—

21                   “(A) the term ‘distributor of record’—

22                           “(i) means a person that takes title to or  
 23                   possession of a drug subject to subsection (b)  
 24                   from manufacture to retail sale;

1 “(ii) includes a person that manufacturers,  
2 processes, packs, distributes, receives, holds,  
3 imports, or offers for importation a drug sub-  
4 ject to subsection (b); and

5 “(iii) does not include a transporter;

6 “(B) the term ‘transporter’ means the United  
7 States Postal Service, or equivalent governmental  
8 service of a foreign country, or a private carrier en-  
9 gaged in the business of transporting packages for  
10 hire; and

11 “(C) the term ‘wholesale distribution’ means  
12 the distribution of a drug subject to subsection (b)  
13 to other than the consumer or patient but not in-  
14 cluding an intracompany sale or distribution of a  
15 drug described in subsection (c)(3)(B).”.

16 (d) ANTICOUNTERFEITING PROGRAMS.—Section  
17 503(e) of the Federal Food, Drug, and Cosmetic Act (21  
18 U.S.C. 353(e)) is amended by adding at the end the fol-  
19 lowing:

20 “(4) The Secretary shall—

21 “(A) establish a network to be known as the  
22 ‘Counterfeit Alert Network’ for the purpose of pro-  
23 viding prompt notification to health professionals  
24 and the public of counterfeit drugs subject to sub-  
25 section (b);

1           “(B) (i) develop and publish an Internet acces-  
2           sible-reference document to facilitate the positive  
3           identification by health professionals and regulatory  
4           agency personnel of prescription drugs marketed in  
5           the United States and Canada; and

6           “(ii) update the materials described under  
7           clause (i) quarterly and when a new permitted coun-  
8           try is designated by the Secretary;

9           “(C) develop and publish educational materials  
10          to help health professionals and consumers identify  
11          and report cases of counterfeit drugs subject to sub-  
12          section (b);

13          “(D) develop and publish secure business prac-  
14          tice guidelines for the sale and distribution of such  
15          drugs in cooperation with members of a drug supply  
16          chain; and

17          “(E) in cooperation with the National Associa-  
18          tion of Boards of Pharmacy, develop and publish re-  
19          vised model rules for licensure of drug wholesalers  
20          for adoption by the States.”.

21 **SEC. 16. CONFORMING AMENDMENTS.**

22          (a) Section 1006 of the Controlled Substances Import  
23          and Export Act (21 U.S.C. 956) is repealed.

24          (b) The Federal Food, Drug, and Cosmetic Act (21  
25          U.S.C. 301 et seq.) is amended—

- 1           (1) in section 301(aa)—
- 2                 (A) by striking “section 804” and insert-
- 3                 ing “subchapter B of chapter VIII”; and
- 4                 (B) by striking “such section” each place
- 5                 it appears and inserting “that subchapter”;
- 6           (2) in section 801(d)(1), by striking “section
- 7           804” and inserting “subchapter B”; and
- 8           (3) by striking section 804.

○